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6 Attorney for Defendant  
7 S.F. Global Sourcing LLC

8  
9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

11  
12 FOLKMANIS, INC.,

13 CIVIL CASE NO.: 14-CV-03828-EMC

14 Plaintiff,  
15 vs.

16 **ANSWER OF SF GLOBAL SOURCING**  
17 **LLC.**

18 DELIVERY AGENT, INC.;, S.F. GLOBAL  
19 SOURCING LLC; CBS  
20 BROADCASTING, INC. and SHANGHAI  
21 ORILAND TOYS CO., LTD.,

22  
23 Defendants.

24  
25 Defendant SF Global Sourcing LLC. (“Defendant”) responds to the complaint (filed  
26 August 25, 2014) (hereinafter “Complaint”), in the above captioned matter as follows:

27  
28 1. In response to the allegations contained in Paragraph 1 of the complaint,  
Defendant states Paragraph 1 contains only legal conclusions to which no response is  
necessary.

1       2.     In response to the allegations contained in Paragraph 2 of the complaint,  
2 Defendant admits Folkmanis, Inc. is a corporation organized under the laws of California with  
3 its principle place of business in Alameda County, CA.

4       3.     In response to the allegations contained in Paragraph 3 of the complaint,  
5 Defendant admits Delivery Agent, Inc. (“DA”) is a corporation organized under the laws of  
6 Delaware with its principle place of business in San Francisco, CA.

7       4.     In response to the allegations contained in Paragraph 4 of the complaint,  
8 Defendant admits that it is a limited liability company with its principle place of business in  
9 San Francisco, CA.

10       5.     In response to the allegations contained in Paragraph 5 of the complaint,  
11 Defendant admits CBS Broadcasting Inc. (“CBS”) is a corporation duly organized under the  
12 laws of the state of New York qualified to do business in California. Defendant, however,  
13 lacks full knowledge of CBS’ relationship with DA sufficient to admit or deny whether one is  
14 the agent of the other.

15       6.     In response to the allegations contained in Paragraph 6 of the complaint,  
16 Defendant states that it does not have sufficient information to admit or deny the allegation in  
17 this paragraph as to the business structure of Shanghai Oriland Toys Co. Ltd. (“SOTC”) or its  
18 principle place of business.

19       7.     In response to the allegations contained in Paragraph 7 of the complaint,  
20 Defendant admits SOTC takes orders from California. Defendant does not have sufficient  
21 information to admit or deny whether those items infringe on Plaintiff’s copyrights.

22       8.     In response to the allegations contained in Paragraphs 8 and 9 of the complaint,  
23 Defendant admits that this court has jurisdiction.

24       9.     In response to the allegations contained in Paragraphs 10 and 11 of the

1 complaint, Defendant admits a district wide assignment is appropriate.

2 10. In response to the allegations contained in Paragraph 12 of the complaint,  
3 Defendant admits that Folkmanis has created puppets, Defendant, however, lacks knowledge  
4 sufficient to admit or deny the quality, acceptance, use in media, or awards earned by said  
5 puppets.

6 11. In response to the allegations contained in Paragraph 13 of the complaint,  
7 Defendant admits these allegations.

8 12. In response to the allegations contained in Paragraph 14 of the complaint,  
9 Defendant admits these allegations.

10 13. In response to the allegations contained in Paragraph 15 of the complaint,  
11 Defendant admits the allegations.

12 14. In response to the allegations contained in Paragraph 16 of the complaint,  
13 Defendant states that it lacks knowledge sufficient to admit or deny this allegation.

14 15. In response to the allegations contained in Paragraph 17 of the complaint,  
15 Defendant states that it lacks knowledge sufficient to admit or deny this allegation.

16 16. In response to the allegations contained in Paragraph 18 of the complaint,  
17 Defendant admits that Bert the Farting Hippo has appeared the CBS show NCIS between  
18 2003 and the present. Defendant lacks knowledge to sufficient to admit or deny whether that  
19 hippo was the one described by Plaintiff.

20 17. In response to the allegations contained in Paragraph 19 of the complaint,  
21 Defendant lacks information sufficient to admit or deny whether Folkmanis retired their hippo  
22 puppets from its line of merchandise in 2006.

23 18. In response to the allegations contained in Paragraph 20 of the complaint,  
24 Defendant lacks knowledge sufficient to admit or deny when Plaintiff commenced producing

1 another hippopotamus puppet product. Defendant lacks knowledge sufficient to admit or  
2 deny whether Folkmanis obtained US Copyright Registration No. VA 1-699-828.

3 19. In response to the allegations contained in Paragraph 21 of the complaint,  
4 Defendant lacks sufficient knowledge to admit or deny what any other party “surmised”.

5 20. In response to the allegations contained in Paragraph 22 of the complaint,  
6 Defendant lacks knowledge sufficient to admit or deny communications between DA and  
7 Plaintiff. Defendant further lacks knowledge sufficient to admit or deny whether the two  
8 referenced Hippos are identical save for the spiked choke collar and sound box. The  
9 allegations relating to the copyrightability of the subject manner is a legal conclusion  
10 requiring no response. Defendant admits that the included screen grab in this paragraph is  
11 representative of an advertisement on the CBS store’s website.

12 21. In response to the allegations contained in Paragraph 23 of the complaint,  
13 Defendant lacks knowledge sufficient to admit or deny the number of hippo puppets supplied  
14 to Folkmanis. Defendant admits that DA and CBS offered Hippo puppets for sale.

15 22. In response to the allegations contained in Paragraph 24 of the complaint,  
16 Defendant lacks knowledge sufficient to admit or deny the content of communications  
17 between Plaintiff and DA or what Plaintiff did in response to those communications.

18 23. In response to the allegations contained in Paragraph 25 of the complaint,  
19 Defendant lacks knowledge sufficient to admit or deny the allegation.

20 24. In response to the allegations contained in Paragraph 26 of the complaint,  
21 Defendant admits the allegations therein.

22 25. In response to the allegations contained in Paragraph 27 of the complaint,  
23 Defendant admits it was contacted by DA for the purpose of sourcing hippo products from  
24 China. Defendant lacks knowledge sufficient to admit or deny whether DA had authorization  
25

1 to make this contact or if it was the reason that no further orders were placed with Plaintiff.

2 26. In response to the allegations contained in Paragraph 28 of the complaint,  
3 Defendant admits sourcing Hippo key chains and puppets from China, but denies that they are  
4 “slavish” copies of any Folkmanis products.

5 27. In response to the allegations contained in Paragraph 29 of the complaint,  
6 Defendant denies the allegations therein.

7 28. In response to the allegations contained in Paragraph 30 of the complaint,  
8 Defendant lacks knowledge sufficient to admit or deny the allegations there in.

9 29. In response to the allegations contained in Paragraph 31 of the complaint,  
10 Defendant denies the allegations therein.

11 30. In response to the allegations contained in Paragraph 32 of the complaint,  
12 Defendant incorporates its responses contained in Paragraphs 9-29 above.

13 31. In response to allegations contained in Paragraph 33 of the complaint,  
14 Defendant states the allegations contained therein constitute a legal conclusion requiring no  
15 response.

16 32. In response to the allegations contained in Paragraph 34 of the complaint,  
17 Defendant incorporates its responses contained in Paragraphs 9-29 above.

18 33. In response to allegations contained in Paragraph 35 of the complaint,  
19 Defendant states the allegations contained therein constitute a legal conclusion requiring no  
20 response.

21 34. In response to the allegations contained in Paragraph 36 of the complaint,  
22 Defendant states the allegations contained therein constitute a legal conclusion requiring no  
23 response.

24 35. In response to the allegations contained in Paragraph 37 of the complaint,

1 Defendant states that to the extent the allegation constitutes legal conclusions no response is  
2 required. Defendant, further, denies it profited in an amount of approximately \$733,000.  
3

4 36. In response to the allegations contained in Paragraph 38 of the complaint,  
5 Defendant states the allegations contained therein constitute legal conclusions requiring no  
6 response.

7 37. In response to the allegations contained in Paragraph 1 of the prayer in  
8 Plaintiff's complaint, Defendant states that the allegations contained therein constitute legal  
9 conclusions requiring no response. Defendant denies it owes Plaintiff any relief.

10 38. In response to the allegations contained in Paragraph 2 of the prayer in  
11 Plaintiff's complaint, Defendant states that the allegations contained therein constitute legal  
12 conclusions requiring no response. Defendant denies it owes Plaintiff any relief.  
13

14 39. In response to the allegations contained in Paragraph 3 of the prayer in  
15 Plaintiff's complaint, Defendant states that Plaintiff is not due any injunctive relief, and  
16 Defendant denies violating any copyright.

17 40. In response to the allegations contained in Paragraph 4 of the prayer in  
18 Plaintiff's complaint, Defendant denies having any material infringing on any valid copy right  
19 of Plaintiff.  
20

21 41. In response to the allegations contained in Paragraph 5 of the prayer in  
22 Plaintiff's complaint, Defendant states the allegations contained therein constitute legal  
23 conclusions requiring no response.

24 42. In response to the allegations contained in Paragraph 6 of the prayer in  
25 Plaintiff's complaint, Defendant denies that it owes Plaintiff any enhanced statutory or actual  
26 damages.  
27

28 43. In response to the allegations contained in Paragraph 7 of the prayer in

1 Plaintiff's complaint, Defendant states it does not owe Plaintiff an accounting.

2 44. In response to the allegations contained in Paragraph 8-9 of the prayer in  
 3 Plaintiff's complaint, Defendant states the allegations contained therein constitute a legal  
 4 conclusion requiring no response.

5 **AFFIRMATIVE DEFENSES**

6 45. By way of affirmative defense to the allegations of the Complaint herein,  
 7 Defendant allege as follows:

8 **FIRST AFFIRMATIVE DEFENSE**

9 46. Plaintiff's Complaint, and each and every claim therein, fails to state a claim  
 10 upon which relief may be granted against Defendants.

11 **SECOND AFFIRMATIVE DEFENSE**

12 47. Defendant is informed and believes and there on allege that Plaintiff has  
 13 waited an unreasonably long time to file this lawsuit, and Defendant's ability to defend this  
 14 lawsuit has been severely prejudiced due to this unreasonable delay by denying them access  
 15 to documents, other physical evidence, witnesses, or a reasonably fresh recollection of the  
 16 events giving rise to this lawsuit.

17 **THIRD AFFIRMATIVE DEFENSE**

18 48. Defendant is informed and believes and there on alleges that Plaintiff has  
 19 failed to take reasonable steps to reduce or minimize the damages experienced.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 49. Defendant is informed and believe and there on alleges that Plaintiff has  
 22 through representations or actions waived its right to sue, and therefore cannot sustain this  
 23 action.

## FIFTH AFFIRMATIVE DEFENSE

50. Defendant is informed and believes and thereon alleges that the Complaint, and each cause of action therein, is barred by the applicable statute of limitations.

## SIXTH AFFIRMATIVE DEFENSE

51. Defendant is informed and believes and there on alleges that other persons were careless and/or negligent, and/or committed intentional acts, and that this carelessness and negligence or these intentional acts proximately contributed to the happening of the incidents referred to in the Complaint.

## SEVENTH AFFIRMATIVE DEFENSE

52. Defendant is informed and believes and there on alleges that the Complaint, and each cause of action contained therein, is barred by the doctrine of Unclean Hands.

## EIGHTH AFFIRMATIVE DEFENSE

53. Defendant is informed and believes and there on alleges that Plaintiff consented to all the acts of Defendant complained of in the Complaint, and that said consent was both express and implied.

## NINTH AFFIRMATIVE DEFENSE

54. Defendant is informed and believes and there on alleges if any copyright was infringed upon. Defendant made fair use of that copyright.

## TENTH AFFIRMATIVE DEFENSE

55 Plaintiff's claims are barred by the doctrine of misuse of copyright

## ELEVENTH AFFIRMATIVE DEFENSE

56. Defendant is informed and believes and there on alleges that the material copyrighted by Plaintiff lacks sufficient originality to warrant copyright protection.

## **TWELFTH AFFIRMATIVE DEFENSE**

57. Defendant is informed and believes and there on alleges that Plaintiff's copyrights are invalid and/or unenforceable.

## THIRTEENTH AFFIRMATIVE DEFENSE

58. Plaintiff's claims are barred to the extent Plaintiff has forfeited or abandoned its intellectual property.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

59. Plaintiff's claims are barred by Plaintiff's license, consent, and acquiescence to Defendant's use.

## FIFTEENTH AFFIRMATIVE DEFENSE

60. Plaintiff's claims are barred because Defendant acted, at all times, in good faith, and with non-willful intent.

## ADDITIONAL DEFENSES

61. Defendant reserves the right to supplement or amend this answer, including through the addition of further affirmative defenses, based upon the course of discovery and proceedings in this action.

## PRAYER FOR RELIEF

62. WHEREFORE, Defendant prays as follows:

1. That Plaintiff takes nothing from this answering Defendant by this Complaint;
2. That Defendant be awarded judgment in this action;
3. For costs of suit incurred herein;
4. For attorney's fees according to statute or contract, and

1           5. For such other and further relief as the Court deems Proper.  
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3  
4           DATED: October 27, 2014                           **MILLSTEIN & ASSOCIATES**  
5  
6           By: /s/ David J. Millstein  
7           David J. Millstein  
8           Gerald S. Richelson  
9           Attorneys for Defendant SF GLOBAL  
10           SOURCING LLC.  
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